उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 08/2001

Appellant — Dhiru Aged about 26 years, Son of Shyamlal Satnami, resident of Udka Chepra, Kondagaon, P.S. Kondagaon, District Bastar, Chhattisgarh.

VERSUS

Respondent — State of Chhattisgarh

Present:
Ms. Nirupma Bajpai, Advocate for the appellant.
Mr. Arun Sao, GA for the State.

ORAL JUDGMENT
(22nd November 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 25th September 2000 passed in S.T.No. 259/99 whereby learned III Additional Sessions Judge, Bastar, Jagdalpur has convicted the appellant under Sections 376(2)(g) of the IPC and sentenced him to undergo RI for 10 years, pay a fine of Rs.5,000/- and in default of payment of fine to undergo additional RI for one year.

शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

2. Case of the prosecution, in brief, is that around the date of incident the prosecutrix was mentally disturbed, she was not able to speak and because of this reason her husband had left her and she was residing with her brother Sanatram (PW-2) along with her children. On 19.5.1999 she had gone to take her bath to the pond at 4.00 in the evening and when she did not return, her brother Sanatram went in search of her and asked Ramu Muria of the village who told him that he had seen two boys dragging a girl forcibly. Thereafter, he went towards the *beshram* bushes and saw that the appellant was committing rape with the prosecutrix. After seeing Sanatram, co-accused Gunga fled from there. He narrated the incident to the village Kotwar and thereafter, report of Ex.P/1 was lodged by him in the police station at about 20.30 hours on 19.5.1999 itself. During investigation the prosecutrix was sent for medical examination to Maharani Hospital, Jagdalpur where Dr. S. Das (PW-3) examined her and gave her report of Ex.P/2. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Kondagaon.

During trial six witnesses were examined by the prosecution. Thereafter, statements of the accused persons were recorded in which they denied the evidence appearing against them in the prosecution case and pleaded innocence

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and false implication in the above offence. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant submits that the prosecutrix did not identify the accused persons by their name. She has stated that apart from the present appellant one Rajkumar also committed rape with her and pointed towards Gunga as the second person who committed rape with her. However, no test identification parade was conducted during investigation. Referring to the statement of PW-1 Navali Bai, wife of Sanatram, it is argued that her husband had informed her that one Godhan had taken the prosecutrix and raped her, however, no charge sheet was filed against Godhan. Even PW-2 Sanatram, the complainant, in paragraph 1 of his deposition has mentioned the presence of third person at the place of incident but he has not been identified. Thus, from the evidence of these witnesses it is clear that it's a case of false implication.

5. On the other hand, learned counsel appearing for the State/respondent supported the impugned judgment of the trial Court.

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(21)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

6. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

7. PW-6 the prosecutrix has stated that 2-3 boys caught her, took her behind the Kondagaon rice mill and forcibly raped her. At the time of incident she was mentally disturbed. Pointing towards the appellant she stated that he forcibly raped her, however, at that time her brother Sanatram came to the spot and beat the appellant. She has further stated that she also identifies co-accused Rajkumar, though she does not know name of the accused persons. In cross-examination she has stated that the accused persons took her from the pond and at that time she was fully conscious. She has denied the suggestion that she accompanied the accused persons of her own free will and stated that they forcibly took her. Her statement is duly corroborated from the statement of PW-2 Sanatram, her brother, who has also stated that the prosecutrix is his sister, she was mentally disturbed at the time of incident, sometimes she used to talk and sometimes not. She had gone to take her bath to the pond, however, when she did not return he went in search of her. When he did not find her in the pond, he enquired from the passersby whereupon he was informed that 2-3 boys were taking a girl and thereafter, he started search of the prosecutrix. Around 5.00 p.m. he

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

found the prosecutrix behind the rice mill where the appellant was committing rape with her and co-accused Gunga was sitting nearby and watching. In the meanwhile, his brother Bhakturam also came there and both of them caught the accused persons and brought them to home. However, he could not identify the third person as he had fled from the place of occurrence after seeing them. Defence has not been able to elicit anything in the cross-examination of this witness, which makes his version untrustworthy or unreliable.

8. So far as arguments advances by learned counsel for the appellant that the accused persons were not put to test identification parade, is concerned, the accused persons were duly identified by the complainant and their name appears in the promptly lodged FIR and thus, there was no dispute regarding identity of the accused persons. From cross-examination of the witnesses, the defence has tried to take a defence that the prosecutrix was a consenting party. However, in a case of gang rape as per Section 114A of the Evidence Act presumption is that when the prosecutrix states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent for sexual intercourse.

9. On the basis of aforesaid analysis, this Court is of the considered opinion that the trial Court has rightly convicted the appellant under Section 376(2)(g) of the IPC based on the

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	proper appreciation of the oral and documentary evidence available on record and there is no illegality or infirmity in the impugned judgment. 10. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	